# United States Court of Appeals

## For the Eighth Circuit

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No. 12-3926

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United States of America

*Plaintiff - Appellee*

v.

Ana Vaca-Gomez

*Defendant - Appellant*

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Appeal from United States District Court
for the Western District of Arkansas - Fayetteville

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Submitted: September 30, 2013
Filed: October 7, 2013
[Unpublished]

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Before LOKEN, BYE, and BENTON, Circuit Judges.

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PER CURIAM.

Ana Vaca-Gomez pleaded guilty to aiding and abetting the distribution of actual methamphetamine, and the district court[1] sentenced her to 87 months in prison and 4

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[1]The Honorable Jimm Larry Hendren, United States District Judge for the Western District of Arkansas.

years of supervised release. On appeal, her counsel has moved to withdraw, and in a brief filed under Anders v. California, 386 U.S. 738 (1967), counsel raises as issues (1) whether the sentence is excessive and unfair, and (2) whether Vaca-Gomez's proffer interviews with the government should have resulted in a motion for a downward departure based on substantial assistance. In his motion to withdraw, counsel states that Vaca-Gomez believes that counsel rendered ineffective assistance.

To the extent Vaca-Gomez raises a claim of ineffective assistance of counsel, we decline to consider it in this direct criminal appeal. See United States v. McAdory, 501 F.3d 868, 872-73 (8th Cir. 2007). We also reject the argument that the district court's sentence was excessive and unfair, see United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc), and we find no basis in the record to conclude that the lack of a substantial-assistance departure motion in this case is a basis to challenge the sentence imposed, see United States v. Wolf, 270 F.3d 1188, 1190 (8th Cir. 2001).

Last, having independently reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, we affirm, and we grant counsel's motion to withdraw.

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